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6 **IN THE UNITED STATES DISTRICT COURT**
 7 **FOR THE DISTRICT OF ARIZONA**

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9 Estados Unidos Mexicanos,
 10 Plaintiff,
 11 v.
 12 Diamondback Shooting Sports
 13 Incorporated, et al.,
 14 Defendants.

No. CV-22-00472-TUC-RM

ORDER

15 Plaintiff Estados Unidos Mexicanos (“Plaintiff” or “Mexico”) sues five Arizona
 16 firearm dealers—Diamondback Shooting Sports, Inc.; SnG Tactical LLC; Loan Prairie
 17 LLC d/b/a/ the Hub; Ammo A-Z, LLC; and Sprague’s Sports, Inc. (collectively,
 18 “Defendants”—alleging that they knowingly “participate in trafficking military-style
 19 weapons and ammunition to drug cartels in Mexico” through “reckless and unlawful
 20 business practices,” including straw sales, bulk sales, and repeat sales. (Doc. 1 at 4, 12 ¶¶
 21 1, 23.) Currently pending before the Court are Plaintiff’s Motions to Compel (Docs. 118,
 22 119), Defendants’ Motion for Protective Order (Doc. 121), Defendants’ Motions to
 23 Compel (Docs. 122, 123, 124), Plaintiff’s Motion to Strike (Doc. 156), and Plaintiff’s
 24 Motion for Leave to File Surreply (Doc. 157).

25 **I. Motion to Strike**

26 Defendants attach two affirmations of counsel to their Reply in Support of Motion
 27 for Protective Order. (Doc. 140-1, Doc. 140-2.) Plaintiff moves to strike the affirmations
 28 on the ground that new evidence cannot be submitted on reply. (Doc. 156.) In the

1 alternative, Plaintiff seeks leave to file a surreply arguing why the affirmations do not
 2 establish undue burden for purposes of Defendants' Motion for Protective Order. (*Id.*)

3 Defendants argue that the affirmations do not constitute new evidence because they
 4 merely re-state, in a different form, the same representations made under Federal Rule of
 5 Civil Procedure 11(b) in Defendants' Motion for Protective Order. (Doc. 161.) Defendants
 6 further argue that Plaintiff suffered no prejudice from the affirmations being attached to
 7 Defendants' Reply, and that Plaintiff is simply seeking to have the last word. (*Id.* at 4-5.)
 8 Finally, Defendants argue that Plaintiff improperly included the surreply as part of its
 9 Motion to Strike, thereby improperly putting it on the record without advance leave of
 10 Court. (*Id.* at 5.)

11 In reply, Plaintiff argues that representations made in a motion do not constitute
 12 evidence, and that the affirmations attached to Defendants' Reply do not simply restate the
 13 representations made in the Motion for Protective Order but, instead, add further details.
 14 (Doc. 163.) Plaintiff also maintains that it properly attached its proposed surreply to its
 15 Motion to Strike. (*Id.* at 2.)

16 As an initial matter, the Court agrees with Defendants that Plaintiff improperly filed
 17 its proposed surreply as an attachment to its Motion to Strike. The Local Rules of Civil
 18 Procedure authorize the filing of a motion, response, and reply, *see LRCiv 7.2(a)-(d)*, but
 19 leave of Court is required to file a surreply. Pursuant to the District of Arizona Case
 20 Management/Electronic Case Filing Administrative Policies and Procedures Manual
 21 ("CM/ECF Manual"), any proposed "documents that cannot be filed without a court order
 22 ... must be electronically lodged using the 'Lodged Proposed Document' event." CM/ECF
 23 Manual § II(H).

24 The Court will excuse the improper filing in this instance and grant Plaintiff leave
 25 to file the surreply, but the Court will deny Plaintiff's request to strike the affirmations
 26 attached to Defendants' Reply in Support of Motion for Protective Order. "[C]ourts
 27 typically do not consider new evidence first submitted in a reply brief because the opposing
 28 party has no opportunity to respond to it." *Crandall v. Starbucks Corp.*, 249 F. Supp. 3d

1 1087, 1104 (N.D. Cal. 2017). However, “[a] district court does not abuse its discretion in
 2 considering new arguments or evidence if the opposing party had an opportunity to
 3 respond.” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1188
 4 (9th Cir. 2024). Although the affirmations attached to Defendants’ Reply largely repeat
 5 the representations made in Defendants’ Motion, given the difference in form and the
 6 additional details provided, the Court finds that Plaintiff should have the opportunity to
 7 address the affirmations directly via its proposed surreply.

8 **II. Motion for Leave to File Surreply**

9 Plaintiff seeks leave to file a surreply to Defendants’ omnibus Reply in Support of
 10 Motions to Compel. (Doc. 157.) Plaintiff argues that a surreply should be allowed because
 11 Defendants raised new arguments in the omnibus Reply, including an argument that
 12 Plaintiff waived privilege for certain documents by not including them on a privilege log,
 13 and an argument that Plaintiff should be required to produce the entirety of the Registro
 14 Criminal de Armas de Fuego (“RECAF”)¹ database. (Doc. 157 at 3.)

15 In response, Defendants contend that Plaintiff again improperly submitted its
 16 surreply as an attachment to its Motion. (Doc. 160 at 3.) Defendants further contend that
 17 Plaintiff’s purported basis for filing a surreply is misleading and insufficient because
 18 Defendants raised the issue concerning Plaintiff’s privilege log in their Motions to Compel
 19 and Plaintiff’s RECAF database has been at the heart of Defendants’ Motions to Compel.
 20 (*Id.* at 3-5.) Defendants ask the Court to deny Plaintiff’s Motion for Leave and to strike
 21 Plaintiff’s proposed surreply from the docket. (*Id.* at 6.)

22 The Court agrees that Defendants’ omnibus Reply did not raise new arguments such
 23 that granting leave to file a surreply is warranted.² The Court also agrees, as discussed
 24 above, that Plaintiff improperly filed the proposed surreply as an attachment to its Motion
 25 for Leave, rather than lodging it as a proposed document. Accordingly, the Court will deny

26
 27 ¹ Plaintiff avers that the Fiscalia General de la Republica de Mexico maintains a database
 28 known as RECAF that holds information on firearms recovered by law enforcement in
 Mexico. (Doc. 137 at 15 n.9.)

² To the extent the Reply does raise new arguments, the Court has not considered them
 herein.

1 Plaintiff's Motion for Leave and grant Defendants' request to strike the proposed surreply.
 2 See LRCiv 7.2(m)(1) (a party may seek to strike a filing that is prohibited or not authorized
 3 by a statute, rule, or court order).

4 **III. Discovery Motions**

5 **A. Legal Standard**

6 Parties may obtain discovery—including via interrogatories pursuant to Rule 33 of
 7 the Federal Rules of Civil Procedure and requests for production pursuant to Rule 34—
 8 “regarding any nonprivileged matter that is relevant to any party’s claim or defense and
 9 proportional to the needs of the case[.]” Fed. R. Civ. P. 26(b)(1). Evidence is relevant if
 10 it has any tendency to make a fact of consequence in determining the action either more or
 11 less probable. Fed. R. Evid. 401. In determining proportionality, the Court considers “the
 12 importance of the issues at stake in the action, the amount in controversy, the parties’
 13 relative access to relevant information, the parties’ resources, the importance of the
 14 discovery in resolving the issues, and whether the burden or expense of the proposed
 15 discovery outweighs its likely benefit.” Information that falls within Rule 26(b)(1)’s scope
 16 of discovery “need not be admissible in evidence to be discoverable.” Fed. R. Civ. P.
 17 26(b)(1).

18 If a party fails to answer an interrogatory submitted under Rule 33 or fails to produce
 19 documents as requested under Rule 34, the party seeking discovery may file a motion to
 20 compel under Rule 37. Fed. R. Civ. P. 37(a)(3)(B)(iii)-(iv). “Once the moving party
 21 establishes that the information requested is within the permissible scope of discovery, the
 22 burden shifts to the” nonmovant to demonstrate why the requested discovery should not be
 23 allowed. *Khalilpour v. CELLCO P’ship*, No. C-09-02712-CW(MEJ), 2010 WL 1267749,
 24 at *1 (N.D. Cal. Apr. 1, 2010).

25 “Any discovery motion brought before the Court without prior personal consultation
 26 with the other party and a sincere effort to resolve the matter, may result in sanctions.”
 27 LRCiv. 7.2(j).

28

1 **B. Discussion**

2 The parties ask the Court to resolve disputes concerning nearly every interrogatory
 3 and request for production (“RFP”) in Plaintiff’s First and Second Set of Interrogatories,
 4 Plaintiff’s First Set of RFPs, Defendants’ First Set of Interrogatories, and Defendants’ First
 5 and Second Set of RFPs. (Docs. 118, 119, 121, 122, 123, 124.) The Court addresses below
 6 certain issues that appear to be intractable and on which the parties require judicial
 7 guidance. However, it appears that many of the parties’ disputes could be resolved via
 8 further good-faith personal consultation, or are otherwise not yet ripe for judicial
 9 resolution.

10 Although the parties met and conferred prior to bringing their discovery disputes to
 11 the Court’s attention, the Court finds that neither party did so sincerely and in good faith.
 12 The Court orders the parties to continue their efforts to resolve disagreements concerning
 13 contention interrogatories, assertions of privilege and privilege logs, searches of
 14 electronically stored information (“ESI”), redactions, and the disclosure of documents
 15 containing information subject to confidentiality agreements or privacy protections. The
 16 parties must comply with the Protective Order and ESI Protocol Order (Docs. 68, 79),
 17 including by meeting and conferring with respect to ESI custodians and data sources. In
 18 addition, with the below guidance, the Court orders the parties to continue their efforts to
 19 resolve disagreements concerning overbreadth, undue burden, lack of proportionality,
 20 vagueness, and lack of particularity, including disagreements concerning whether
 21 information can be obtained from less burdensome sources, such as publicly available
 22 sources. *See Fed. R. Civ. P. 26(b)(2)(C).*³

23 ³ The Court notes that Defendants have failed to meet and confer in good faith to narrow
 24 patently overbroad discovery requests. For example, Defendants refused to negotiate in
 25 good faith to narrow RFPs 1 and 2 of Defendants’ First Set of RFPs, which ask Plaintiff to
 26 produce all documents and communications concerning Defendants, cartels, firearms,
 27 firearm trafficking, and Plaintiff’s injuries. (Doc. 122-1 at 7-8.) The Court presumes that
 28 Mexico has in its possession, custody, and control many millions of documents that
 mention cartels or firearms, and Defendants have wholly failed to show that all such
 documents are relevant or that producing them would be proportional to the needs of this
 case. (*See Doc. 123 at 4-5.*) Similarly, Defendants request production of 10 million records
 that were allegedly hacked from Mexico, but Defendants wholly fail to establish the
 relevance and proportionality of all ten million records. (Doc. 122-1 at 8; *see also* Doc.
 122-2 at 10-13; Doc. 123 at 6-7; Doc. 124 at 14-15.) If Defendants continue to take

1 Because the Court finds that all parties have failed to engage in discovery in a
 2 professional, transparent, and cooperative manner, the Court finds that an award of
 3 expenses to any party would not be just and therefore declines to shift costs to any particular
 4 party at this time. *See Fed. R. Civ. P. 37(a)(5)*. However, the Court warns the parties that
 5 future failures to act in good faith during discovery may result in sanctions, including, if
 6 appropriate, an order shifting costs to the attorney(s) advising the unacceptable conduct.

7 **1. Reasonable Time Period for Discovery**

8 Plaintiff's First Set of Interrogatories defines the relevant time period as October 1,
 9 2016, through present, while Plaintiff's Second Set of Interrogatories and First Set of RFPs
 10 define the relevant period as January 1, 2010, through present. (Doc. 118-2 at 11; Doc.
 11 119-3 at 2, 78.) Defendants objected to Plaintiff's proposed time periods and argued that
 12 the responsive period for Plaintiff's discovery requests should be set at two years preceding
 13 the filing of this lawsuit. (*See, e.g.*, Doc. 119-3 at 27, 29-30, 38, 40-41, 49, 51-52, 59-62,
 14 69, 71-72.) However, Defendants' First Set of Interrogatories and First and Second Sets
 15 of RFPs define the relevant period for Defendants' discovery requests as January 1, 2004,
 16 through the present, based on the Complaint's reference to the expiration in 2004 of an
 17 assault weapons ban in the United States. (Doc. 122-1 at 5; Doc. 122-2 at 7; Doc. 122-3 at
 18 8.)

19 In its Motions to Compel and in response to Defendants' Motions to Compel,
 20 Plaintiff argues that the relevant period for Defendants' discovery requests and most of
 21 Plaintiff's discovery requests should begin on October 1, 2016—roughly six years
 22 preceding the filing of this lawsuit. (Doc. 118 at 6-7; Doc. 119 at 15; Doc. 137 at 29-30.)
 23 Plaintiff argues that the responsive period for RFPs “related to duty of care, knowledge of
 24 risks and harms, training materials, and policies and practices” should begin on January 1,
 25 2010, because Defendants' knowledge of red flags indicative of firearm trafficking can be
 26 demonstrated from information long predating the statute of limitations, and some
 27 informational, policy, and training materials may date back to 2010 but remain operative
 28 unreasonable positions in discovery and continue to refuse to meet and confer in good faith,
 the Court will impose sanctions.

1 years later. (Doc. 118 at 7-8.) Plaintiff argues that the responsive period should extend to
 2 the present because Plaintiff seeks injunctive relief for alleged ongoing negligence and
 3 harm. (*Id.* at 8.)

4 In response to Plaintiff's Motions to Compel, Defendants argue that Plaintiff's
 5 discovery requests should be limited to the longest applicable statute of limitations, four
 6 years. (Doc. 134 at 5-6.) However, Defendants agree to compromise to a six-year
 7 responsive period. (*Id.* at 6.) Defendants continue to argue that the responsive period for
 8 their own discovery requests should begin in 2004. (Doc. 155 at 8.) Defendants argue that
 9 limiting the period for their own discovery requests "would exclude potentially highly
 10 relevant information showing that Mexico caused the gun violence epidemic for decades,
 11 and failed to mitigate it, far predating the statute of limitations at issue in this case." (*Id.*)

12 "The statute of limitations is not a rigid barrier separating discoverable information
 13 from information outside the scope of discovery." *Gottesman v. Santana*, No. 16-cv-2902-
 14 JLS(JLB), 2017 WL 5889765, at *5 (S.D. Cal. Nov. 29, 2017). "[C]ourts permit parties to
 15 take discovery of information outside the period of limitations where such information is
 16 shown to meet the broadly defined standard for relevance." *Board of Trustees of Kern*
 17 *Cnty. Elec. Workers' Pension Fund v. Trinity Constr. Enters., Inc.*, No. 1:24-CV-00563-
 18 JLT-CDB, 2025 WL 1233872, at *2 (E.D. Cal. Apr. 29, 2025).

19 The Court agrees that evidence predating the longest applicable four-year statute of
 20 limitations may be relevant to the parties' claims and defenses. However, Defendants have
 21 failed to show that the period governing their discovery requests should begin in 2004
 22 merely because Plaintiff's Complaint mentions the 2004 expiration of a United States
 23 assault weapons ban. Furthermore, the relevance of evidence decreases and the burden of
 24 production increases with age. Balancing the burden and expense of the proposed
 25 discovery with its likely benefit, the Court finds that a reasonable period for all parties'
 26 discovery requests is October 1, 2016, to the present.⁴ Documents such as training
 27 materials fall within this period if they were operative during the period, even if they were

28 ⁴ The Court agrees with Plaintiff that the period should extend to the present given that Plaintiff alleges ongoing harm and seeks injunctive relief.

1 created before the period.

2 **2. Substantive Scope of Discovery**

3 The parties have raised myriad objections arguing overbreadth, undue burden,
4 irrelevance, and lack of proportionality. Many of the parties' concerns fall into two
5 primary categories. First, Defendants take the position that they should not be required to
6 produce sales records concerning any firearms beyond those specifically identified by
7 Plaintiff as having been recovered at crime scenes in Mexico, whereas Plaintiff argues that
8 all Defendants' sales records should be produced and has refused to provide Defendants
9 with information concerning firearms recovered at crime scenes in Mexico. Second,
10 Plaintiff takes the position that it should not be required to produce any information
11 relevant to the issue of whether it contributed to or failed to mitigate harm arising from
12 firearm violence within its borders. The Court addresses below the parties' arguments
13 concerning these issues. The Court also addresses several other issues concerning
14 relevance, but the Court declines to address all of the parties' overbreadth, undue burden,
15 relevance, and proportionality objections at this time, as it appears many of the objections
16 can be resolved through continued sincere personal consultation in light of the guidance
17 provided herein.

18 **a. Defendants' Sales Records**

19 Defendants have at times taken the position that they should be required to disclose
20 only those sales records relating specifically to the firearms mentioned in Plaintiff's
21 Complaint. (*See* Doc. 118-2 at 107, 115, 123, 131.) Defendants now appear to take the
22 position that their sales records are discoverable if they relate to any firearm recovered at
23 a crime scene in Mexico during the responsive period, whether or not that firearm is
24 specifically mentioned in the Complaint. (*See* Doc. 121 at 8.) The former position is
25 unreasonable because the firearms discussed in Plaintiff's Complaint were mentioned for
26 illustrative purposes only, as this Court has already recognized. (*See* Doc. 50 at 14.) With
27 respect to Defendants' revised position, Plaintiff contends that all Defendants' sales
28 records are relevant because they may reveal patterns and practices showing notice of red

1 flags indicative of straw purchases and/or firearm trafficking. (Doc. 133 at 8-9.)

2 The Court agrees with Plaintiff that sales records beyond those relating to firearms
 3 recovered at crime scenes in Mexico are relevant to Plaintiff's ability to establish
 4 Defendants' notice of red flags. However, Defendants' sales records are irrelevant to the
 5 extent they relate to firearms purchased for lawful purposes. In light of Rule 26(b)(1)'s
 6 scope of discovery, the Court finds that Defendants' sales records are discoverable to the
 7 following extent: sales records from October 1, 2016, through present are relevant: (a) if
 8 they relate to any firearms recovered at a crime scene in Mexico during the responsive
 9 period; (b) if they relate to any other firearms for which Defendants received trace requests
 10 or other law enforcement communications during the responsive period; and/or (c) if they
 11 relate to any other firearms, ammunition, or firearm accessories sold to the same
 12 individuals who purchased any firearm in categories (a) and (b).⁵ As discussed below,
 13 Plaintiff must produce to Defendants information concerning the make and serial number
 14 of firearms recovered at crime scenes in Mexico, such that Defendants can compare the
 15 information to their records and determine whether they sold any of the recovered firearms.
 16 The Court finds that Plaintiff has not established the relevance of records related to
 17 Defendants' firearm, ammunition, and firearm accessory purchases.⁶

18 To the extent paper records must be scanned and converted to electronic form to
 19 enable Defendants to produce responsive records to Plaintiff, the Court finds that
 20 Defendants have failed to establish that producing the records—as limited above—would
 21 cause an undue burden or that it would be disproportionate to the needs of this case. The
 22 record reflects cost estimates only for two of the five Defendants, and the cost estimates do
 23 not reflect the limitations on relevance and responsive period set forth above. Defendants
 24 have provided little information from which this Court can discern the percentage of

25 ⁵ With this guidance on relevance, the parties shall continue to meet and confer regarding
 26 the production of related documents, such as law enforcement communications.

27 ⁶ Plaintiff argues that records of Defendants' acquisitions is relevant because it could
 28 "reveal how soon a Defendant sold a firearm after acquiring it, which may indicate whether
 it was a special order." (Doc. 147 at 11 n.16.) However, Plaintiff's Complaint does not
 allege, and Plaintiff has not shown, that special order sales are more likely to have indicia
 of illegality.

1 records which are kept electronically versus in paper form by each Defendant.
 2 Furthermore, the Court cannot determine whether the submitted cost estimates represent
 3 an undue burden in light of Defendants' financial resources because—as addressed
 4 below—Defendants have refused to produce information concerning their finances. Given
 5 the breadth and scope of this litigation, and the damages at issue, the Court finds that the
 6 evidence of undue burden submitted by Defendants is insufficient.

7 **b. Tiahrt Amendment**

8 Congress has attached a provision known as the Tiahrt Amendment, or Tiahrt Rider,
 9 to its Consolidated Appropriations Acts of 2003, 2005, 2008, 2010, and 2012. *See Ctr. for*
 10 *Investigative Reporting v. U.S. Dep't of Justice*, 14 F.4th 916, 924 (9th Cir. 2021). Each
 11 version of the Tiahrt Amendment has prohibited the Bureau of Alcohol, Tobacco, Firearms
 12 and Explosives (“ATF”) from using appropriated funds to disclose firearm tracing records,
 13 subject to varying limitations and exceptions. *Id.* at 924-25.

14 Plaintiff expresses concern that the Tiahrt Amendment does not permit it to disclose
 15 information received from ATF. (Doc. 133 at 14-16.) However, Plaintiff states that it
 16 would like to disclose and introduce at trial the contents of its RECAF database, which
 17 include trace reports connecting Defendants to recovered firearms. (*Id.* at 15.) Plaintiff
 18 states that, if Defendants produce all their sales records, Plaintiff can provide data from
 19 RECAF that did not originate from ATF and that identifies which of Defendants' firearms
 20 were recovered in Mexico. (*Id.* at 16.) Barring that solution, Plaintiff requests leave to
 21 provide supplemental briefing regarding why the Tiahrt Amendment should not restrict
 22 Plaintiff from producing or introducing at trial information obtained from ATF. (*Id.*)
 23 Defendants contend that Plaintiffs' Tiahrt Amendment objection is frivolous because this
 24 Court already overruled objections that Defendants raised under the Tiahrt Amendment.
 25 (Doc. 140 at 3-4.)

26 Plaintiff's Tiahrt Amendment concerns are distinct from the Tiahrt Amendment
 27 objections previously raised by Defendants. (See Doc. 95 at 1-16.) In resolving
 28 Defendants' previously raised objections, the Court found that the Tiahrt Amendment

1 “does not restrict Defendants’ disclosure of their private business records.” (Doc. 111 at
 2 5.) However, the 2012 Tiahrt Amendment provides for limited disclosure of trace data to
 3 foreign law enforcement agencies and then explicitly prohibits such agencies from
 4 “knowingly and publicly disclos[ing] such data.” Pub. L. No. 112-55, 125 Stat. 552, 609-
 5 10 (2012). Accordingly, although the Tiahrt Amendment does not restrict a firearm
 6 dealer’s disclosure of its own private business records, it does contain an express limitation
 7 on foreign law enforcement agencies’ disclosure of trace data received from ATF.

8 It appears that Plaintiff has in its possession, custody, and control information
 9 concerning the make and serial numbers of firearms recovered at crime scenes in Mexico,
 10 and that Plaintiff can disclose that information without needing to disclose trace data
 11 received from ATF.⁷ Accordingly, the Court declines to resolve Plaintiff’s Tiahrt
 12 Amendment concerns at this time. If Plaintiff cannot produce information concerning the
 13 make and serial numbers of firearms recovered at crime scenes in Mexico without
 14 disclosing trace data received from ATF, then the Court grants Plaintiff permission to file
 15 a supplemental brief addressing whether the Tiahrt Amendment prohibits the production.
 16 Plaintiff may also file a supplemental brief addressing the Tiahrt Amendment if Plaintiff
 17 seeks to use trace data received from ATF in connection with any disputes concerning
 18 Defendants’ determinations of which recovered firearms were sold by Defendants.

19 **c. Mitigation and Comparative Fault**

20 Plaintiff has raised numerous relevance objections arising from its position that, as
 21 a governmental entity, it has no legal duty in tort “to provide for the general welfare” and,
 22 therefore, Defendants have no viable theory of failure to mitigate or comparative fault
 23 based on Plaintiff’s efforts to combat gun violence. (Doc. 122-6 at 15; *see also, e.g., id.* at
 24 19-23; Doc. 122-4 at 61, 64, 69, 75, 77, 79-80.) And in response to Defendants’ Motions
 25 to Compel, Plaintiff argues that the act of state and public duty doctrines bar affirmative
 26 defenses that challenge Plaintiff’s official acts or assert Plaintiff’s contributory negligence.
 27 (Doc. 137 at 22-28; Doc. 138 at 11-18.)

28 ⁷ Information concerning recovered firearms not sold by Defendants is relevant to issues
 of causation and comparative fault.

1 Plaintiff is free to argue at summary judgment that the act of state and public duty
 2 doctrines preclude certain defenses. However, Plaintiff's position that Defendants are not
 3 entitled to discovery related to theories of failure to mitigate or comparative fault is
 4 baseless in light of this Court's Order on Plaintiff's previously filed Motion to Strike
 5 Affirmative Defenses. (*See* Doc. 102.) In that Order, the Court noted the necessity of
 6 discovery into the fault of all parties contributing to harm from firearm violence in Mexico,
 7 and the Court declined to strike Defendants' defenses concerning proximate causation,
 8 comparative fault, failure to mitigate, and unclean hands stemming from Plaintiff's alleged
 9 failure to control cartel violence within its borders. (*Id.* at 4-8, 12-14.)

10 Because Defendants' defenses concerning proximate causation, comparative fault,
 11 failure to mitigate, and unclean hands remain part of this litigation, Plaintiff cannot
 12 categorically refuse to produce information relevant to those defenses. However, requests
 13 for information relevant to issues of causation, comparative fault, failure to mitigate, and
 14 unclean hands are limited to the responsive period of October 1, 2016, to the present and
 15 must fall within the permissible scope of discovery under Rule 26(b)(1).⁸

16 **d. Other Issues Concerning Overbreadth and Undue Burden**

17 Defendants argue that their financial records, including profits data, balance sheets,
 18 and tax returns, are irrelevant to Plaintiff's claims and that discovery of the financial
 19 records is premature to the extent the records relate to punitive damages. (Doc. 134 at 12-
 20 13.) Plaintiff argues that Defendants' refusal to produce financial information is
 21 unsupported by law, as such information is relevant to Plaintiff's claims, including
 22 Plaintiff's unjust enrichment claim and Plaintiff's request for punitive damages. (Doc. 118
 23 at 16; Doc. 147 at 11-12.) Regardless of whether discovery concerning punitive damages
 24 is premature, Defendants' financial records are relevant to Plaintiff's unjust enrichment
 25 claim. *See Sun Valley Ranch 308 Ltd. P'ship ex rel. Englewood Props., Inc. v. Robson,*

26 ⁸ Discovery requests related to the 2014 disappearance of students from the Ayotzinapa
 27 Rural Teachers' College (*see, e.g.*, Doc. 122-2 at 14) fall outside the responsive period and
 28 are otherwise not relevant and proportionate to the needs of the case. The parties shall
 continue their meet-and-confer efforts regarding Defendants' other discovery requests
 relevant to causation and comparative fault, including requests concerning the Merida
 Initiative.

1 294 P.3d 125, 131 (Ariz. App. 2012) (stating elements of unjust enrichment claim).
 2 Defendants' categorical refusal to produce their financial records is without legal
 3 justification.

4 RFP 22 of Defendants' Second Set of RFPs requests “[a]ll Documents concerning
 5 all Foreign Agent Registrations concerning this Action, the subject matter thereof, or the
 6 representation of You in connection with this Action or the subject matter thereof.” (Doc.
 7 122-2 at 13.) Among other objections, Plaintiff objected to relevance and proportionality
 8 and stated that RFP 22 is vague, ambiguous, and grammatically indecipherable. (Doc. 122-
 9 5 at 60-61.) Instead of working with Plaintiff to clarify the RFP, Defendants simply dug
 10 in, arguing in a September 23, 2024 letter and in their Motion to Compel that the request
 11 is not vague, ambiguous, or grammatically indecipherable. (See Doc. 122-7 at 22; Doc.
 12 124 at 16.) Defendants' refusal to clarify this RFP in response to Plaintiff's objections
 13 exemplifies Defendants' failure to meet and confer in good faith. Not only is RFP 22
 14 grammatically confusing, but Defendants have failed to establish the relevance of the
 15 documents sought. Accordingly, Plaintiff need not respond to RFP 22 of Defendants'
 16 Second Set of RFPs.

17 Defendants argue that the Court should either order Plaintiff to produce responsive
 18 records possessed by its branches, agencies, and political subdivisions, or alternatively hold
 19 that Plaintiff cannot recover any damages other than those incurred by the federal
 20 government of Mexico. (Doc. 122 at 9-10; Doc. 124 at 6.) In response, Plaintiff argues
 21 that the fact that it does not have custody and control over certain files for purposes of
 22 discovery is wholly unrelated to its standing to proceed in *parens patriae* on behalf of its
 23 citizens. (Doc. 137 at 21-22.) Plaintiff need only produce information within its
 24 “possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). Defendants' argument
 25 concerning the scope of Plaintiff's recoverable damages is premature and more properly
 26 raised at the summary judgment stage.

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1 **3. Interrogatories—Numerosity**

2 Plaintiff and Defendants both assert numerosity objections against one another,
 3 arguing that the opposing party has exceeded the 25-interrogatory limit because subparts
 4 of their interrogatories should be counted as separate interrogatories, but arguing that their
 5 own interrogatories should each count as only one for purposes of the numerical limit. (*See*
 6 Doc. 119 at 7-9; Doc. 122 at 12-13, 16-20; Doc. 135 at 6-10; Doc. 138 at 2, 7-8, 18; Doc.
 7 148 at 2-5; Doc. 155 at 10.)

8 Rule 33 provides that, “[u]nless otherwise stipulated or ordered by the court, a party
 9 may serve on any other party no more than 25 written interrogatories, including all discrete
 10 subparts.” Fed. R. Civ. P. 33(a)(1). The rule does not define the term “discrete subparts,”
 11 and there is little circuit court guidance on the issue. The Advisory Committee Notes to
 12 the 1993 Amendment to Rule 33 state the following:

13 Parties cannot evade [the 25-interrogatory] presumptive limitation through
 14 the device of joining as “subparts” questions that seek information about
 15 discrete separate subjects. However, a question asking about
 16 communications of a particular type should be treated as a single
 17 interrogatory even though it requests that the time, place, persons present,
 18 and contents be stated separately for each such communication.

19 Fed. R. Civ. P. 33, Advisory Committee Notes to 1993 Amendment.

20 District courts have taken varying approaches to determining when a subpart of an
 21 interrogatory should be counted as a separate interrogatory for purposes of Rule 33’s
 22 numerical limit. Some courts apply a “common-theme” approach, in which “an
 23 interrogatory containing subparts directed at eliciting details concerning a common theme
 24 should be considered a single question[.]” 8B Charles Alan Wright, Arthur R. Miller &
 25 Richard L. Marcus, *Federal Practice & Procedure* § 2168.1 (3d ed. updated 2025); *see also*
 26 *Erfindergemeinschaft Uropep GbR v. Eli Lilly & Co.*, 315 F.R.D. 191, 195-196 (E.D. Tex.
 27 2016) (collecting cases adopting this approach). However, “[w]hat constitutes ‘a common
 28 theme’ . . . is subject to widely divergent views, and “if the concept of ‘common theme’ is
 29 given a sufficiently broad interpretation, there is almost no limit to the use of multiple
 30 subparts that could qualify as falling within a single interrogatory.” *Erfindergemeinschaft*,

1 315 F.R.D. at 196.

2 Other courts, including many district courts within the Ninth Circuit, apply a
 3 related-question test, in which “subparts that are logically or factually subsumed within
 4 and necessarily related to the primary question should not be treated as separate
 5 interrogatories.” *Moser v. Navistar Int'l Corp.*, No. 4:17-CV-00598, 2018 WL 3614012,
 6 at *6 (E.D. Tex. July 27, 2018); *see also Rambus Inc. v. NVIDIA Corp.*, No. C-08-03343
 7 SI, 2011 WL 11746749, at *14 (N.D. Cal. Aug. 24, 2011); *Safeco of Am. v. Rawstron*, 181
 8 F.R.D. 441, 445 (C.D. Cal. 1998); *Erfindergemeinschaft*, 315 F.R.D. at 196 (collecting
 9 cases applying related-question test). Put another way, “[i]f the first question can be
 10 answered fully and completely without answering the second question, then the second
 11 question is totally independent of the first and not factually subsumed within it.”
 12 *Dimitrijevic v. TV&C GP Holding Inc.*, No. H-04-3457, 2005 WL 8164073, at *2 (S.D.
 13 Tex. Aug. 24, 2005) (internal quotation and alteration marks omitted); *see also Kendall v.*
 14 *GES Exposition Servs., Inc.*, 174 F.R.D. 684, 685–86 (D. Nev. 1997) (asking whether
 15 subsequent question can stand alone); *Erfindergemeinschaft*, 315 F.R.D. at 196.

16 Ultimately, “the issue of ‘discreteness’ cannot reliably be captured by a verbal
 17 formula,” turning instead “on a case-by-case assessment of the degree to which the subpart
 18 is logically related to the primary question in the interrogatory, as opposed to being separate
 19 and distinct.” *Erfindergemeinschaft*, 315 F.R.D. at 197. In determining discreteness,
 20 courts should be mindful of “the competing purposes of Rule 33(a)(1): allowing reasonable
 21 latitude in formulating an inquiry to elicit as complete an answer as possible, while at the
 22 same time not allowing the multiplication of interrogatories to the point that it defeats the
 23 purposes underlying the 25-interrogatory limit.” *Id.* at 196–197.

24 With these principles in mind, the Court turns to the parties’ specific numerosity
 25 objections.

26 a. Plaintiff’s Interrogatories

27 Defendants argue that Interrogatory One of Plaintiff’s First Set of Interrogatories
 28 constitutes at least 164 and as many as 27,552 separate interrogatories. (Doc. 119-3 at 28,

1 39, 50, 60, 70.) The Court disagrees. The interrogatory asks Defendants to identify all
 2 electronic devices and databases used by Defendants' employees and agents that contain
 3 information related to firearm sales. (*Id.* at 8-9.) The interrogatory contains subparts and
 4 references an attached list of firearms in order to provide specific details regarding the
 5 electronic devices and databases whose identification is being sought, but the subparts of
 6 the interrogatory are logically subsumed within the primary question.

7 Defendants argue that Interrogatory Two of Plaintiff's First Set of Interrogatories
 8 consists of a minimum of 164 and as many as 7,380 separate interrogatories. (Doc. 119-3
 9 at 29-30, 41, 51-52, 62, 71-72.) The Court finds that Interrogatory Two consists of three
 10 separate interrogatories for purposes of Rule 33's numerical limit, because the
 11 interrogatory asks Defendants to identify all employees or former employees⁹ in three
 12 discrete categories: those responsible for firearm sales identified in a referenced
 13 attachment, those involved in communications with ATF or other law enforcement
 14 agencies regarding Defendants' firearm sales, and those responsible for training employees
 15 on firearm sales.

16 Defendants argue that Interrogatory Three of Plaintiff's First Set of Interrogatories
 17 consists of a minimum of 8 and as many as 16 separate interrogatories. (Doc. 119-3 at 30-
 18 31, 41-42, 53, 62-63, 73.) The interrogatory asks Defendants to identify all video
 19 surveillance cameras or other recording devices operational at Defendants' point-of-sale
 20 locations and to provide details concerning each such device, including where the device
 21 was installed, the time period during which it was operational, whether it recorded audio
 22 and/or video, how often it recorded, what prompted recordings, the dates for which
 23 recordings are available, and information concerning deleted recordings. (Doc. 119-3 at
 24 9.) This interrogatory primarily seeks information concerning recording devices, and the
 25 subparts merely provide details regarding the information being requested. Therefore, this
 26 interrogatory counts as one interrogatory for purposes of the numerical limit.

27 ⁹ The interrogatory requests identification of the names of the employees or former
 28 employees, along with other details such as job position, dates of employment, job duties,
 and involvement in the delineated categories. The Court finds that these other details are
 subsumed within the primary request for the identification of the individuals.

1 Defendants' numerosity objections to Interrogatories Four through Nine of
 2 Plaintiff's Second Set of Interrogatories appear to be premised on Defendants' position that
 3 Plaintiff already exceeded Rule 33's 25-interrogatory limit in its First Set of
 4 Interrogatories. (*See, e.g.*, Doc. 119-3 at 92-98, 105-111, 118-125, 133-143.) Although
 5 Defendants argue in their Response to Plaintiff's Motion to Compel that Plaintiff's use of
 6 embedded requests "continues throughout the first and second sets of interrogatories,"
 7 (Doc. 135 at 6), Defendants do not specifically explain in their Response or in their
 8 interrogatory objections why any particular interrogatory in Plaintiff's Second Set of
 9 Interrogatories should be counted as more than one interrogatory. To the extent the
 10 interrogatories in Plaintiff's Second Set of Interrogatories contain subparts, the Court finds
 11 that they are logically subsumed within the primary question of each interrogatory.

12 Plaintiff argues that Interrogatories One through Three of its First Set of
 13 Interrogatories should not count toward Rule 33's numerical limit at all, because the
 14 interrogatories request basic information that Defendants should have disclosed in the
 15 ordinary course of discovery. (Doc. 119 at 15-17; Doc. 148 at 9-10.) In support of this
 16 argument, Plaintiff cites a case in which the court allowed a party to exceed the numerical
 17 limitation of Rule 33 due to the party's inability to obtain basic initial disclosure
 18 information pursuant to Rule 26(a). (*See* Doc. 119 at 17 and Doc. 148 at 9 (citing *Thomas*
 19 *v. Yates*, No. 1:05-cv-01198-LJO-JMD-HC, 2009 WL 3273280, at *7 (E.D. Cal. Oct. 9,
 20 2009).) However, Plaintiff states in its Reply that its request to not count its First Set of
 21 Interrogatories against Rule 33's presumptive numerical limit "is not driven by
 22 Defendants' failure to make sufficient initial disclosures but rather by their inability to
 23 engage in transparent and cooperative discovery negotiations." (Doc. 148 at 4.) The Court
 24 finds that Plaintiff has not adequately supported its request to discount Interrogatories One
 25 through Three in calculating the number of Plaintiff's interrogatories for purposes of Rule
 26 33's numerical limit.

27 In conclusion, the Court finds that Plaintiff's first nine interrogatories should count
 28 as twelve interrogatories for purposes of Rule 33's numerical limit, because Interrogatory

1 Two consists of three separate interrogatories.

2 **b. Defendants' Interrogatories**

3 Defendants argue that Plaintiff waived its numerosity objections by selectively
 4 answering interrogatories. (Doc. 122 at 13.) However, because Plaintiff objected to
 5 numerosity and did not respond to any interrogatories it considered to have surpassed the
 6 25-interrogatory limit, the Court finds that Plaintiff did not waive its numerosity objections.
 7 See *TIW Holdings LLC v. Hotbox Farms LLC*, No. 3:24-cv-00126-AN, 2025 WL 1112840,
 8 at *3 (D. Or. Apr. 15, 2025) (no waiver of numerosity objection where responding party
 9 responds to first 25 interrogatories and objects to the remainder).

10 Plaintiff raises numerosity objections to Interrogatories Four, Ten, and Fourteen
 11 through Eighteen of Defendants' First Set of Interrogatories. Interrogatory Four asks
 12 Plaintiff to provide details concerning each cost, expenditure, damage, loss or harm that
 13 Plaintiff attributes to Defendants in this action, including (a) the nature and amount of the
 14 damage; (b) the time period for which recovery is sought; and (c) how and when the
 15 damage was determined or calculated. (Doc. 122-3 at 10.) Plaintiff argues that
 16 Interrogatory Four of Defendants' First Set of Interrogatories consists of a minimum of 12
 17 and a maximum of 36 separate interrogatories, because it seeks three discrete categories of
 18 information related to 12 separate injuries alleged in Plaintiff's Complaint. (Doc. 122-6 at
 19 14; Doc. 138 at 7-8.) Applying the same approach applied to Plaintiff's interrogatories,
 20 the Court disagrees. Interrogatory Four seeks information concerning Plaintiff's damages,
 21 with specification regarding the details being sought. The subparts of this interrogatory
 22 are logically subsumed within the primary question, and therefore this interrogatory
 23 consists of a single interrogatory.

24 Interrogatory Ten of Defendants' First Set of Interrogatories asks Plaintiff to
 25 identify all communications concerning "complaints, disagreements, requests for
 26 assistance, acknowledgement of efforts, joint efforts, task forces, bilateral agreements, or
 27 coordinated efforts with foreign countries . . . regarding firearms violence, illegal firearm
 28 trafficking or cartel fueled violence." (Doc. 122-3 at 12.) Plaintiff argues that this

1 interrogatory should count as two interrogatories because it seeks information about two
 2 discrete types of interactions: complaints and disagreements, versus joint efforts, task
 3 forces, bilateral agreements, and coordinated efforts. (Doc. 122-6 at 21-22; Doc. 138 at 17
 4 n.4.) The Court disagrees that this interrogatory should count as two interrogatories merely
 5 because it seeks information about interactions that can be characterized as either
 6 adversarial or cooperative. The interrogatory seeks firearm or cartel-related
 7 communications with foreign countries, and the subparts of the interrogatory detail the
 8 types of communications being sought. Applying the same approach applied to Plaintiff's
 9 interrogatories, the Court finds that the subparts of this interrogatory are logically
 10 subsumed within the primary question. Accordingly, Interrogatory Ten consists of one
 11 interrogatory.

12 Interrogatory Fourteen of Defendants' First Set of Interrogatories asks Plaintiff to
 13 identify every firearm recovered or associated with a crime in Mexico during the
 14 responsive period, including the chain of custody for each such firearm and whether any
 15 illegal possessor was a member of a criminal cartel in Mexico. (Doc. 122-3 at 12-13.)¹⁰
 16 Plaintiff argues that this interrogatory should count as two interrogatories, because
 17 information regarding the cartel affiliation of firearm possessors is a discrete inquiry from
 18 information about the firearm itself. (Doc. 122-6 at 25.) The Court finds that the request
 19 for chain-of-custody information is logically subsumed within the request for identification
 20 of the firearms, but the Court agrees with Plaintiff that the request for the cartel affiliation
 21 of any illegal possessors is a discrete, independent inquiry. Accordingly, Interrogatory
 22 Fourteen consists of two interrogatories for purposes of Rule 33's numerical limit.

23 Interrogatory Fifteen of Defendants' First Set of Interrogatories asks Plaintiff to
 24 identify every firearm traced by Mexico, including the model and serial number, as well as
 25 the chain of custody for each firearm from the original manufacturer to the illegal
 26 possessor, the facts surrounding the firearm's presence in Mexico, and Mexico's

27
 28 ¹⁰ To the extent Plaintiff is concerned that the Tiahrt Amendment may restrict its ability to
 fully answer Defendants' interrogatories, Plaintiff may file a supplemental brief, as set
 forth above.

1 investigation or prosecution of anyone in connection with the firearm. (Doc. 122-3 at 13.)
2 Plaintiff argues that this interrogatory should count as two interrogatories, because the
3 inquiry regarding the investigation or prosecution of anyone in connection with the
4 firearms is discrete from the inquiry for information about the firearms. (Doc. 122-6 at 26-
5 27.) The Court agrees. Although chain-of-custody information is logically subsumed
6 within the request for identification of the firearms, the request for information concerning
7 Mexico's investigation or prosecution of anyone in connection with the firearms is a
8 discrete and independent inquiry. Accordingly, Interrogatory Fifteen consists of two
9 interrogatories.

10 Interrogatory Sixteen of Defendants' First Set of Interrogatories seeks information
11 regarding each firearm recovered or associated with a crime in Mexico that was at any time
12 legally possessed in Mexico, including the facts surrounding the firearm's legal presence
13 and use in Mexico, Mexico's investigation or prosecution of anyone in connection with the
14 firearm, and the damages that Plaintiff incurred in connection with the firearm. (Doc. 122-
15 3 at 13.) Plaintiff argues that this interrogatory consists of three separate and discrete
16 inquiries: one inquiry seeking information about the firearms at issue, one inquiry seeking
17 information concerning the investigation or prosecution of anyone in connection with the
18 firearms at issue, and one seeking information concerning the damages associated with the
19 firearms at issue. (Doc. 122-6 at 28.) The Court agrees that Interrogatory Sixteen consists
20 of three discrete interrogatories.

21 Plaintiff's numerosity objections to Interrogatories Seventeen and Eighteen of
22 Defendants' First Set of Interrogatories appear to be premised on Plaintiff's position that
23 Defendants already exceeded Rule 33's numerical limit. (Doc. 122-6 at 29-30.) Plaintiffs
24 do not appear to argue that either interrogatory contains discrete subparts that should be
25 counted as separate interrogatories for purposes of the numerical limit. The Court has
26 reviewed the interrogatories and finds that each should count as one interrogatory for
27 purposes of the 25-interrogatory limit.

28 In conclusion, Interrogatories Four and Fifteen of Defendants' First Set of

1 Interrogatories each consist of two interrogatories, and Interrogatory Sixteen consists of
2 three. Accordingly, Defendants' First Set of Interrogatories contains 22 separate
3 interrogatories.

4 **IV. Conclusion**

5 With the above guidance, the Court orders the parties to continue to meet and confer
6 in good faith to resolve their remaining discovery disputes.

7 **IT IS ORDERED:**

- 8 1. Plaintiff's Motion to Strike (Doc. 156) is **partially granted and partially**
9 **denied**. The Motion is denied to the extent Plaintiff asks the Court to strike
10 the affirmations attached to Defendants' Reply in Support of Motion for
11 Protective Order. The Motion is granted to the extent Plaintiff requests leave
12 to file a Surreply. The Court has considered the Surreply attached to
13 Plaintiff's Motion to Strike.
- 14 2. Plaintiff's Motion for Leave to File Surreply (Doc. 157) is **denied**. The
15 Surreply attached to the Motion for Leave (Doc. 157 at 6-10) is **stricken**
16 from the record.
- 17 3. Plaintiff's Motions to Compel (Docs. 118, 119), Defendants' Motion for
18 Protective Order (Doc. 121), and Defendants' Motions to Compel (Docs.
19 122, 123, 124) are **partially granted and partially denied**, as set forth
20 above.

21 Dated this 21st day of October, 2025.

22
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24
25 
26 Honorable Rosemary Márquez
27 United States District Judge
28